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In the High Court of Punjab & Haryana at Chandigarh.

Date of decision : 1.11.2006.

State of Haryana and others .... Appellants.

vs

Jagan Nath .....Respondent.

Coram Hon'ble Ms. Justice Kiran Anand Lall.

Present: Mr.Parduman Yadav,Deputy Advocate General,Haryana,
for the appellants.
Mr.Harsh Kinra, and Mr.N.C.Kinra,Advocates,
for the respondent.

Kiran Anand Lall, J.

This is a regular second appeal filed by the State of Haryana against the appellate court judgment and decree dated 10.11.2004. The first appellate court accepted the appeal of the respondent-herein, Jagan Nath, and decreed his declaratory suit which had been dismissed by the trial court, on 31.10.2002.

The facts of the case, as recorded in the judgment of the first appellate court, are that the respondent served the Police Department, Haryana, as Sub-Inspector. He retired from service, on superannuation, on 28.2.1991, while he was posted at Sonepat. He had been, earlier, charge-sheeted and dismissed from service by the DIG, Gurgaon Range, vide order dated 29.12.1981. He filed a suit, challenging his dismissal. The trial court dismissed his suit. But, the first appellate court accepted his appeal, decreed the suit, and ordered his reinstatement in service, vide judgment dated 24.12.1988. The decretal of the suit was upheld upto the Apex Court. The verdict of the first appellate court, ordering his reinstatement, thereby attained finality on 29.10.1990. He wrote several letters, followed by

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reminders, to the competent authority, for his reinstatement. But, instead of complying with the court-orders, the SSP, Sonepat, passed orders dated 6.5.1991, dismissing him from service, under Rule 16.2 of the Punjab Police Rules, 1934 (as applicable to Haryana), with effect from 21.2.1984, on the basis of his conviction and sentence, recorded on 11.3.1983, by the court of Additional Sessions Judge, Sonepat, in a criminal case under Sections 323/ 325 IPC. He, thereupon, filed a statutory appeal to the DIG, Rohtak, and then, a revision to the Director General of Police, Haryana, but the two were dismissed on 29.9.1993 and 27.10.1997 respectively. These two orders and the order dated 6.5.1991 (supra) were, then, challenged by him in the present suit wherein his stand, in a nutshell, was that he could not have been dismissed after he had already retired from service. Another ground of attack was that he could not have been retired (on 6.5.1991) with retrospective effect from 21.2.1984. He also pleaded that on merits, too, the dismissal order was bad, as his conviction under Sections 323/ 325 IPC did not amount to moral turpitude. It was further pleaded that no opportunity of hearing was given to him, before passing the order of dismissal and also the orders dismissing his statutory appeal and revision. He also pleaded that he had been paid salary right upto the date of his retirement, considering him to be in continuous service. He prayed for the setting aside of the impugned orders dated 6.5.1991 (Ex.D1), 22.9.1993 (Ex.P46) and 27.10.1997 (Ex.P47), and also claimed the consequential reliefs of revised pay scale and also promotion etc., as per the rules.

The appellants (defendants) contested the suit. According to them, since the respondent had been convicted and sentenced in a criminal case under Section 323/ 325 IPC, he had no right to remain in service. It

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was pleaded in para no.3 (on merits) of the written statement that since he had already been dismissed, on the basis of a finding recorded in the departmental inquiry, no fresh order of dismissal was passed against him on the basis of the verdict of conviction and sentence recorded against him in the criminal case, but in para no.7 thereof, it was, however, stated that by virtue of order dated 6.5.1991, he was deemed to have been dismissed on 21.2.1984.

The trial court framed issues, recorded evidence, and ultimately dismissed the suit. Findings on issues no.3 to 5 were, however, answered in favour of the respondent. The respondent challenged the verdict of the trial court, only in respect of the findings on issues no.1, 2 and 6. The first appellate court accepted the appeal, set aside the findings on all these three issues, and decreed the suit.

The appellants (defendants), thereafter, filed this regular second appeal.

On being called upon to state the substantial question of law involved in this appeal, learned counsel for the appellants could not point out any. Infact, no such question arises in this appeal. That being so, there is, of course, no need to discuss any other point. But, still I would like to add that even on merits, the appellants have no case. The respondent had already retired, when the impugned order was passed on 6.5.1991, dismissing him from service with effect from 21.2.1984 --- a course which is unknown to law. It needs no emphasis to state that after retirement, the relationship of employer and employee comes to an end, and once that is so, there cannot be any question of dismissing a person (retired employee) who is no more in employment. As such, the order passed on 6.5.1991, Ex.D1,

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`dismissing' the respondent from service, and that, too, with retrospective effect from 21.2.1984, was meaningless. Another fact to be taken note of is that, as mentioned in para no.10 (e) of the plaint and not disputed by the learned counsel for the appellants during arguments, the department had even paid him all the salary, with effect from 1.1.1982 upto the date of his retirement. The department had, thus, clearly treated him, to be in service, till the date of his retirement. The order of his `dismissal' passed after his retirement was, therefore, clearly illegal.

In the end, it may also be mentioned that the impugned order of dismissal (Ex.D1), even does not indicate that the competent authority had considered the facts of criminal case and arrived at the conclusion that the offences for which he had been convicted and sentenced involved moral turpitude.

In view of the above, no fault can be found with the judgment and decree under challenge, on any score. The appeal, therefore, deserves dismissal, and it is so ordered, accordingly.

1.11.2006. (Kiran Anand Lall)
vs. Judge.